

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-200-C - ORDER NO. 2003-594
OCTOBER 3, 2003

IN RE: Application of Covista, Inc. for a Certificate) ORDER
of Public Convenience and Necessity to) GRANTING
Provide Local Exchange) APPLICATION FOR
Telecommunications Services and for) LOCAL EXCHANGE
Flexible Regulation.) AUTHORITY AND
) FLEXIBLE REGULATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Covista, Inc. ("Covista" or "the Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate in South Carolina as a reseller of local exchange telecommunications services and as a facilities-based local exchange telecommunications service provider. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the Regulations of the Public Service Commission of South Carolina. By its Application, Covista also requests a flexible rate structure for its local exchange service offerings consistent with the principles and procedures set forth in Commission Order No. 98-165 in Docket No. 97-467-C. Covista further requests waivers of 26 S.C. Code Ann. Regs. 103-631, which requires the Company to publish a telephone directory, from the requirement to file with the Commission a service area map, and from the requirement that the Company maintain its books and records in conformance with the Uniform System of Accounts (USOA).

The Commission's Executive Director instructed Covista to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Covista's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Covista complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. The South Carolina Telephone Coalition ("SCTC") filed a Petition to Intervene in this matter on August 22, 2003. SCTC was notified of the hearing in this matter but did not to make an appearance at the hearing.

A hearing was convened on September 24, 2003, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Covista was represented by Scott Elliott, Esquire. Jeffrey Nelson, Staff Counsel, represented the Commission Staff.

Frank Pazera, Chief Financial Officer of Covista, appeared and testified in support of the Application. The record reveals that Covista is a New Jersey corporation authorized by the South Carolina Secretary of State to conduct business in South Carolina. According to Mr. Pazera, Covista seeks authority to offer on a resale basis within South Carolina, local exchange telecommunications services. Mr. Pazera further testified that Covista intends to initially offer resold local exchange services and local services utilizing the UNE-P platform. These services will be provided through the facilities of incumbent local exchange carriers as well as unbundled network elements. Covista intends to primarily resell the facilities and services of BellSouth and will also use unbundled network elements and services purchased from BellSouth and other

ILECs, where available, to provide services through Covista's facilities. Mr. Pazera explained the Company's request for authority and the record reveals the Company's services, operations, and marketing procedures.

Mr. Pazera also testified regarding Covista's technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Finally, Mr. Pazera testified that Covista will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. In this regard, he agreed to amend Covista's proposed tariff by deleting Section 2.5.1.1 of the proposed tariff (deleting that provision of the tariff permitting the company to pass Gross Receipts taxes directly to the consumer) and revising Section 2.5.2.4 of the proposed tariff to provide that returned check charge fees will be set and collected in accordance with S.C. Code Ann. Section 34-11-70.

Mr. Pazera also offered that approval of Covista's Application would serve the public interest by allowing customers to obtain very competitive rates and services, by promoting efficient use of the underlying network, by increasing access revenues for underlying carriers, and by increasing tax revenue for the State of South Carolina.

Finally, Covista requested that it be exempt from any record-keeping rules or requirements that the company be required to maintain its financial records in conformance with the Uniform System of Accounts (USOA). Mr. Pazera testified that Covista utilizes the Generally Accepted Accounting Principles (GAAP) and that the Commission will therefore have a reliable means by which to evaluate the operations. He further requested that Covista be exempt from any requirements that the Company

publish and distribute telephone directories under Regulation 103-631 and be exempt from filing service area maps. Covista will make arrangements with the incumbent ILECs whereby the names of Covista's customers will be included in the directories published by the ILEC and for these directories to be distributed Covista customers.

Covista formerly operated under the name "Total-Tel" and was authorized to resell long distance telecommunications services by this Commission in Docket Number 94-397-C.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. We find that Covista is organized and registered as a corporation under the laws of the State of New Jersey and is authorized to do business in South Carolina by the South Carolina Secretary of State.

2. The evidence and testimony in this case clearly demonstrate, and we hereby find, that Covista intends to operate as a facilities-based provider and reseller of local telecommunications services and wishes to provide its services in South Carolina.

3. We find, based on the evidence and testimony presented at the hearing, as well as the review of the file materials and the recommendations of the Commission Staff in this matter, that Covista possesses the necessary experience, capability, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280(B)(1) (Supp. 2002)

4. We find that the proposed tariff of the Company is acceptable based on Covista's agreement, through Mr. Pazera's testimony, to revise the tariff in accordance with the recommendations of Staff. Specifically, that Covista will delete section 2.5.1.1 of the proposed tariff referring to gross receipts tax, and will revise section 2.5.2.4 and indicate that returned check charges shall be set and collected by the Company in accordance with S.C. Code Ann. Section 34-11-70

5. We find that Covista has provided sufficient information and testimony to indicate that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(4) (Supp. 2002).

6. We further find that approval of this Application will not adversely impact the availability of affordable local exchange service. S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2002).

7. We find that the evidence and testimony support Covista's claim that it will provide services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2) (Supp. 2002).

8. We finally find that Covista's provision of local exchange service will not adversely impact the public interest. S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2002).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Covista to provide

competitive resold and facilities-based intrastate local exchange services to customers located in South Carolina.

2. Covista shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Covista's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to New South Communications in Commission Order No. 98-165, Docket No. 97-467-C. The Commission adopts for Covista's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Covista's local exchange service filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. Covista will only resell the services or lease the facilities of those companies authorized to provide telecommunications services in South Carolina by this Commission. If Covista changes underlying carriers, it shall notify the Commission in writing.

4. Covista shall conduct its business in compliance with Commission decisions and Orders, both past and future.

5. If it has not already done so by the date of issuance of this Order, Covista shall file its revised tariff and an accompanying price list within prior to offering local telecommunications services in South Carolina. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. Title 23, Chapter 47 of the South Carolina Code of Laws Annotated governs the establishment and implementation of a "Public Safety Communications Center" which is more commonly known as a "911 system" of "911 Service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Covista to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Division of Chief Information Officer of the South Carolina Budget and Control Board. By this Order and prior to providing voice of dial-tone services within South Carolina, Covista shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city had its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

7. Covista shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, Covista shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found on the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Report for CLECs." The Company shall file the annual report form with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may be found on the Commission's website at www.psc.state.sc.us/forms.

Additionally, Covista shall file with the Commission a quarterly report entitled "CLEC Service Quality Quarterly Report." The proper form for this report is found on the Commission's website at www.psc.state.sc.us/forms.

8. Covista shall also file with the Commission, with its Final Tariff, a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2002).

9. Covista shall file annually the Intrastate State Universal Service Fund (USF) worksheet due August 15 for calendar and fiscal year ending companies.

10. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit,

711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 2, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. Complete information on compliance with this FCC and Commission requirement may be found on the Commission's website at www.psc.state.sc.us/forms.

11. For good cause shown, Covista is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Practices rather than the Uniform System of Accounts method.

12. For good cause shown, Covista is granted a waiver of the requirement that the Company publish and distribute a directory under S.C. Code Ann. Regs. Reg. 103-631 and that it file service area maps with the Commission. Covista is ordered to contact the incumbent ILECs to ensure that the Company's customers are included in the applicable directory.


13. Covista is authorized to maintain its books and records in the State of New Jersey, provided that it will make such records available to this Commission and its Staff when requested and will pay for any additional costs associated with the travel of the Staff or reproduction of books and records as a result of the books and records being located outside the State of South Carolina.

14. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Covista shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

15. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Deputy Executive Director

(SEAL)